

**Memorandum of Law in Support
of Motion to Quash the
November 15, 2018 Show Cause
Order, Quash Any Subsequent
Orders from the Probate Court
and, Enjoin the Probate Court
from Further Proceedings**

quash any subsequent orders from the Probate Court, and enjoin the Probate Court from any further proceedings.

The Probate Court’s Show Cause Order violates the All Writs Act, the Anti-Injunction Act, and 28 U.S.C. § 1446(d). The All Writs Act states that a federal court “may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.” 28 U.S.C. § 1651. However, the All Writs Act is subject to limitations expressed in the Anti-Injunction Act, which provides as follows: “A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283.

One of the recognized statutory exceptions to the prohibition of the Anti-Injunction Act is the federal removal statute’s instruction that, after removal, “the State court shall proceed no further unless and until the case is remanded.” *See* 28 U.S.C. 1446(d); *see also Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 640 (1977) (“The statutory procedures for removal of a case from state court to federal court provide that the removal acts as a stay of the state-court proceedings.”); *Mitchum v. Foster*, 407 U.S. 225, 234 (1972) (reiterating that removal to federal court is a situation where there is an express authorization to enjoin state court proceedings). **“Section 1446(d), with its ‘proceed no further’ directive, has generally been understood to expressly authorize injunctions of state courts ignoring that directive.”** *Ackerman v. Exxon Mobil Corp.*, 734 F.3d 237, 250 (4th Cir. 2013) (emphasis added).

According to this explicit authority, Discover asks the Court to quash the November 15, 2018 Show Cause Order, quash any subsequent orders from the Probate Court, and enjoin the Probate Court from proceeding in this matter, unless this action is remanded. Here, this matter was

removed to federal court on November 9, 2018, and this Court has diversity jurisdiction over this case. The Probate Court's November 15, 2018 Show Cause Order "constitutes an attempt to subvert federal removal jurisdiction." *Vigil v. Mora Indep. Schs.*, 841 F. Supp. 2d 1238, 1241 (D.N.M. 2012). Thus, "[a]ccording to § 1446(d), the All Writs Act, and the Anti-Injunction Act, this Court has express Congressional authorization to enjoin such state court proceedings in order to aid in its jurisdiction." *Id.* Accordingly, Discover respectfully requests that this Court quash the November 15, 2018 Show Cause Order, quash any subsequent orders from the Probate Court, and enjoin the Probate Court from proceeding further "unless and until the case is remanded." 28 U.S.C. § 1446(d).

Respectfully submitted this 16th day of November, 2018.

/s/ David A. Elliott

David A. Elliott, Fed Bar No. 11538
Ryan S. Rummage, Fed Bar No. 12753
BURR & FORMAN LLP
420 North 20th Street, Suite 3400
Birmingham, Alabama 35203
Telephone: (205) 251-3000
Facsimile: (205) 458-5100
delliott@burr.com
rrummage@burr.com

Attorneys for Defendant
DISCOVER BANK

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing document by directing same to Plaintiff's office address by Federal Express and email, on this the 16th day of November, 2018:

Leslie Jay Shayne
P.O. Box 503
109 North Catherine Street
Walhalla, SC 29691
Fax: (864) 638-5146

/s/ David A. Elliott
OF COUNSEL